

UNITED STATES SMELTING REFINING & MINING COMPANY

IBLA 72-109

Decided December 11, 1972

Appeal from the letter decision of the Wyoming Land Office, Bureau of Land Management, giving notice that the segregated lease (W-30631) will continue in effect, unless relinquished, until September 1, 1973, and so long thereafter as oil and gas is produced in paying quantities.

Affirmed.

Oil and Gas Leases: Extensions

A lease upon which production is obtained while it is within any fixed term of years does not, by reason of that fact, become a lease for the life of production, but remains a lease for a fixed term of years until the end of that fixed term.

Oil and Gas Leases: Extensions -- Oil and Gas Leases: Unit and Cooperative Agreements

Commitment to a unit agreement of a portion of a lease on which there is production, during the fixed term of the lease, will not extend the uncommitted, nonproducing segregated lease beyond the fixed term of years for the original lease or two years from the date of commitment, whichever is longer.

Oil and Gas Leases: Extensions -- Oil and Gas Leases: Unit and Cooperative Agreements

The segregated lease embracing nonproducing lands uncommitted to an approved unit agreement will continue for the fixed term of the original lease or for two years from date of segregation, whichever is the longer.

APPEARANCES: J. V. Neuman, Jr., Vice President, United States Smelting Refining and Mining Company, Salt Lake City, Utah.

OPINION BY MR. HENRIQUES

Oil and gas lease Wyoming 0151447 was originally issued to the appellant on October 1, 1961, for a period of ten years and so long

thereafter as oil or gas is produced in paying quantities. While the lease was still in its primary or fixed term, on September 1, 1971, it was segregated into two leases because of partial commitment to the Grady Unit Agreement, 14-08-0001-12310. 30 U.S.C. § 226(j) 1970. The unitized portion retained the original lease identification, Wyoming 0151447; the nonunitized portion is now identified as lease W-30631. By letter decision dated August 31, 1971, appellant company was given notice that, under the regulation 43 CFR 3107.4-3, the nonunitized segregated lease W-30631 would continue in effect, unless relinquished, until September 1, 1973, and so long thereafter as oil or gas is produced in paying quantities therefrom. An appeal was taken from this decision.

Appellant contends that lease Wyoming 0151447 was extended by production at the time of its partial commitment to the approved unit agreement, so that the term of the segregated lease W-30631 should be so long as production of oil or gas in paying quantities continues on lease Wyoming 0151447. In support of its position appellant cites from Solicitor's Opinion M-36605, 67 I.D. 357 (1960):

It is my conclusion that the intent of Congress in the enactment of Sec. 4(d) [Mineral Leasing Act Revision of 1960, Act of September 2, 1960, 74 Stat. 781], was that the words "primary term" as there used covered the entire period of the life of the lease prior to the period of extension because of production.

Appellant apparently contends that lease Wyoming 0151447 was extended by production from the date that oil or gas first was produced in paying quantities therefrom, on or about October 1, 1969.

We cannot accept this thesis. The habendum clause of the federal oil and gas lease provides "the lessee is granted the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits \* \* \* for a period of 10 years and so long thereafter as oil or gas is produced in paying quantities \* \* \*."

Lease Wyoming 0151447 was issued October 1, 1961, so that its stated term of ten years did not expire until the conclusion of September 30, 1971. Although the lease was actually producing oil or gas in paying quantities prior to October 1, 1971, it was not a lease extended by production until October 1, 1971, after the conclusion of the fixed period of time set forth in the habendum clause of the lease. The Solicitor's Opinion cited by appellant is not to the contrary. No oil and gas lease can be considered as extended by production or any other reason while it is still within its original fixed period of time. Production from a lease obtained during any fixed term thereof does not convert the fixed term into an indefinite "so long as" term and does not, unless continued beyond the fixed

term, have the effect of extending the lease term. Solicitor's Opinion, M-36543 (January 23, 1959).

Thus, in the case at bar, segregation because of partial commitment of lease Wyoming 0151447 to an approved unit agreement before October 1, 1971, occurred during the fixed primary term of the lease so that the segregated lease covering the uncommitted portion of the lands shall continue for the fixed term of the original lease, but for not less than two years from the date of segregation and so long thereafter as oil or gas is produced in paying quantities. Cf. Ann Guyer Lewis, et al., 68 I.D. 180 (1961). As the fixed term of the original lease Wyoming 0151447 concluded less than two years after the date of segregation, the State Office correctly advised appellant that lease W-30631 would run to September 1, 1973.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques, Member

We concur:

Martin Ritvo, Member

Joan B. Thompson, Member.

